

LEGISLATIVE BILL 668

Approved by the Governor June 7, 1985

Introduced by Higgins, 9; Landis, 46; Goodrich, 20; Hannibal, 4; Schmit, 23; V. Johnson, 8; Hall, 7; Remmers, 1; Lundy, 36; Nelson, 35; Smith, 33; Barrett, 39; Beyer, 3; Hartnett, 45; Peterson, 21; Chronister, 18; Labedz, 5; Pappas, 42; Rogers, 41; Morehead, 30; R. Johnson, 34; Chizek, 31; Sieck, 24; Conway, 17; Withem, 14; Pirsch, 10; Lynch, 13; Lamb, 43; Rupp, 22; Nichol, 48; Abboud, 12; Hefner, 19

AN ACT relating to crimes and punishments; to amend sections 28-1463 and 28-1464, Reissue Revised Statutes of Nebraska, 1943; to adopt the Child Pornography Prevention Act; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Child Pornography Prevention Act.

Sec. 2. As used in the Child Pornography Prevention Act, unless the context otherwise requires:

(1) Child shall mean any person under the age of sixteen years;

(2) Erotic fondling shall mean touching a person's clothed or unclothed genitals or pubic area, breasts if the person is a female, or developing breast area if the person is a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved. Erotic fondling shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(3) Erotic nudity shall mean the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(4) Sadomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the morbid interest;

(5) Sexually explicit conduct shall mean: (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved; and

(6) Visual depiction shall mean live performance or photographic representation.

Sec. 3. That section 28-1463, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~28-1463-~~ (1) It shall be unlawful for a person to knowingly make, publish, present, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct ~~obscene material~~ which has a child as one of its participants or portrayed observers, a child under the age of sixteen or who appears as prepubescent.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person or ~~minor~~ or knowingly possess with intent to sell, deliver, distribute, display for sale, or provide to any person or ~~minor~~ any visual depiction of sexually explicit conduct ~~obscene material~~ which has a child as one of its participants or portrayed observers, a child under the age of sixteen or who appears as prepubescent.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

Sec. 4. (1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) Any person who violates this section shall be guilty of a Class I misdemeanor for the first offense and shall be guilty of a Class IV felony for each subsequent offense.

Sec. 5. That section 28-1464, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~28-1464-~~ Any person who violates the provisions

~~of section~~ section 28-1463 3 of this act shall be guilty of a Class III felony for the first offense and shall be guilty of a Class II felony for each subsequent offense.

Sec. 6. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 7. That original sections 28-1463 and 28-1464, Reissue Revised Statutes of Nebraska, 1943, are repealed.